IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GREGORY HOLLOMAN	:	**CIVIL ACTION**
	:	
v.	:	
	:	
CORRECTIONS OFFICER M. NEILY,	:	
CORRECTIONS OFFICER JAMES ROSS	:	
and CORRECTIONS OFFICER PRESTON	:	
a/k/a/ C/O PREZLY	:	**NO. 97-8067**

MEMORANDUM ORDER

Presently before the court is defendants' joint motion for summary judgment in this 42 U.S.C. § 1983 case in which plaintiff has alleged a violation of his Eighth amendment rights.

The prohibition on cruel and unusual punishment requires corrections officers to take reasonable steps to protect inmates from attacks by other inmates. See Wilson v. Seiter, 501 U.S. 294, 296-97 (1991). A prison official is liable if he knows of a sufficiently serious threat to a prisoner of physical violence at the hands of another prisoner and then acts with deliberate indifference to the risk of harm created by that threat. See Farmer v. Brennan, 511 U.S. 825, 834 (1994).

Plaintiff has presented competent evidence in the form of a sworn affidavit and deposition testimony from which the following account of pertinent events appears. Plaintiff was placed in protective custody at his request on July 27, 1996. He was told on July 28, 1996 by defendant Neily that he could not hide in protective custody and was "going to get what's coming to [him]." Defendant Neily then ordered plaintiff to remove his

orange jumpsuit, which is the uniform provided to inmates in protective custody, and moved him into a general population cell while telling plaintiff that he was "doing this so [plaintiff] could get a beating." Defendant Neily refused to permit plaintiff to speak to a supervisor. If this account is credited, one could reasonably conclude that defendant Neily knew of a sufficiently serious threat to a prisoner of physical violence at the hands of another prisoner and acted with deliberate indifference to the risk of harm created by that threat.

On the next shift, plaintiff informed defendant Preston about what defendant Neily had done and that plaintiff was supposed to be in protective custody because his safety was in danger. Plaintiff showed defendant Preston his "protective custody papers." Defendant Preston then told plaintiff, "so what, you're going to get what's coming to you, you snitch" and ordered him to "get away from her." There is no evidence of record that defendant Preston placed plaintiff into a secure area pending investigation of the validity of his request, which is proper procedure pursuant to Philadelphia Prison System Policy 3.E.4. If plaintiff's account is credited, one could reasonably conclude that defendant Preston knew of a sufficiently serious threat to a prisoner of physical violence at the hands of another prisoner and acted with deliberate indifference to the risk of harm created by that threat.

On July 29, 1996, plaintiff was instructed, without apparent reason, to go to "Medical." On his way to "Medical," plaintiff told defendant Ross that he was a protective custody inmate and was supposed to be escorted. He showed defendant Ross his "protective custody papers." Defendant Ross told plaintiff "so what, that's on you." Upon arrival at "Medical," plaintiff was told that no one there had summoned him and that he should return to his cell.

While returning to his cell, plaintiff was confronted by another inmate. When he attempted to walk in the other direction, a correctional officer blocked his egress by closing the control booth door and defendant Ross told plaintiff, "don't look at us for help." The other inmate, wielding a milk crate, then assaulted plaintiff in the presence of defendant Ross and other correctional officers. Defendant Ross did not take action to stop the assault but joined in the assault, punching and kicking plaintiff and beating him with a walkie-talkie.

Defendant Ross denies that he assaulted plaintiff. He asserts that he had no prior knowledge of any risk to plaintiff and attempted to intervene to extricate plaintiff as soon as it became reasonably safe for him to do so. The risk of serious injury to an inmate who is being assaulted by another inmate wielding a crate would seem to be evident. Even a corrections officer who perceives a serious risk of injury, however, is not

liable when he responds reasonably even if he ultimately fails to avert the harm. Id. at 844-45. Prison guards are not constitutionally required to take heroic measures and risk serious physical harm by intervening immediately in an inmate's assault on another inmate. See, e.g., Winfield v. Bass, 106 F.3d 525, 532-33 (4th Cir. 1997) (en banc); Prosser v. Ross, 70 F.3d 1005, 1008 (8th Cir. 1995); MacKay v. Farnsworth, 48 F.3d 491, 493 (10th Cir. 1995). Calling for backup in such circumstances could be a reasonable response. See MacKay, 48 F.3d at 493.

If plaintiff's account is credited, however, one reasonably could find that defendant Ross reacted with unreasonable delay and actually joined in the assault. One might also reasonably conclude that plaintiff's statements to defendant Ross prior to the assault put him on notice that there was a sufficiently serious threat to plaintiff of physical violence at the hands of another prisoner and that a failure by defendant Ross to protect plaintiff consistent with Philadelphia Prison Systems Policy 3.E.4 constituted deliberate indifference to the risk of harm created by that threat.

It is axiomatic that at the summary judgment stage the court may not weigh the evidence or assess credibility and must draw all reasonable inferences from the record in favor of the non-movant. Thus, the denials and explanations of defendants clearly do not satisfy their burden to show that there exists no

genuine issue of material fact and that they are entitled to judgment as a matter of law.

ACCORDINGLY, this day of March, 2000, upon consideration of defendants' Motion for Summary Judgment (Doc. #70), **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

BY THE COURT:

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JAY C. WALDMAN, J.